family relation, and the personality of the child. See *Matter of Matthews*, 153 N. Y. 443, 47 N. E. 901; *Powell* v. *State*, 84 Ohio St. 165, 95 N. E. 660; Melvin, J., dissenting, in *Estate of McNamara*, *supra*. While the child's rights of substance are not directly involved in the principal case, it would seem proper to apply the presumption for the protection of the child's interests of personality.

EASEMENTS — EXTENT OF USER — ORDER TO COMPEL CLOSING OF GATE. — A had a right of way over B's land. In order to confine his live-stock, B fenced his land, leaving a gate to preserve the way. A refusing to close the gate, B brought a bill to compel A to do so. *Held*, that A must close the gate. *Geohegan* v. *Henry*, 55 Ir. L. J. Rep. 190.

The owner of the servient tenement may maintain gates across a way created by grant, if they are necessary to a reasonable enjoyment of his property and do not unduly interfere with the easement granted. *Green* v. *Goff*, 153 Ill. 534, 39 N. E. 975; *Blais* v. *Clare*. 207 Mass. 67, 92 N. E. 1009. See JONES, EASEMENTS, §§ 400-407. The right may, however, be expressly or impliedly negatived in the grant of the easement. See *Flaherty* v. *Fleming*, 58 W. Va. 669, 52 S. E. 857; *Dickinson* v. *Whiting*, 141 Mass. 414, 6 N. E. 92. The same rule should apply when the easement is acquired by prescription, though the way was totally unobstructed during the prescriptive period. The nature of the easement gained should govern, rather than the particular manner of use by which it was gained. *Luster* v. *Garner*, 128 Tenn. 160, 159 S. W. 604; *Ames* v. *Shaw*, 82 Me. 379, 19 Atl. 856. *Contra*, *Shivers* v. *Shivers*, 32 N. J. Eq. 578; *Fankboner* v. *Corder*, 127 Ind. 164, 26 N. E. 766. If it is once admitted that the maintenance of gates is reasonable under the circumstances, the owner of the easement must close them. *Mendelson* v. *McCabe*, 144 Cal. 230, 77 Pac. 915; *Griffin* v. *Gilchrist*, 29 R. I. 200, 69 Atl. 683; *Helwig* v. *Miller*, 47 Pa. Super. Ct. 171. Failure to do so is an abuse of his right, the repetition of which will be enjoined in order to prevent a multiplicity of petty actions at law.

EXECUTORS — LIABILITY TO ACCOUNT FOR PROFITS INDIRECTLY DERIVED FROM CONTROL OVER THE ESTATE. — The defendant Trusts Corporation held as executor a controlling interest in the stock, and thereby "carried on the business," of the W Corporation. The latter corporation, having a large sum on hand, deposited it with the defendant upon terms which "it was admitted were more profitable [to the W Corporation] than any that could have been made with a bank." The beneficiaries of the estate brought this bill, charging *inter alios* that the defendant would make a profit out of the deposit and because of its fiduciary position ought to have to account for it. *Held*, that this portion of the bill be dismissed. *Woods* v. *Toronto General Trusts Corporation*, 20 Ont. Weekly Notes, 431.

A trustee or other fiduciary may not retain any profit derived from dealings with the trust estate. *Magruder* v. *Drury*, 235 U. S. 106; SCOTT, CASES ON TRUSTS, 501; *Skinnell* v. *Mahoney*, 197 App. Div. 808, 189 N. Y. Supp. 845. See *Hand* v. *Allen*, 128 N. E. 305, 312 (Ill.). Nor may he keep profits derived immediately from his own property if they are obtained indirectly by virtue of some advantage given by his holding of the trust *res*. *Bay State Gas Co.* v. *Rogers*, 147 Fed. 557 (Circ. Ct., D. Mass.). See 20 HARV. L. REV. 337. The rule is one of precaution and is applied stringently because of the otherwise great possibility of abuse. Since in the principal case the stock in the W Corporation gave the defendant a potential control of the corporation's money, a decision for the plaintiff might upon the authorities have been expected. But it may be that the corporation was governed by a board of directors not subservient to the defendant. If that was so, the decision may be supported on the ground that, so long as it acts in good faith and not to the positive

detriment of the estate, such a directorate insulates the liability of the fiduciary. Thus promoters, although standing in a fiduciary relationship, may deal with their corporation to their own advantage if they furnish it with an independent directorate and make full disclosure of their own interests. See *Dickerman* v. *Northern Trust Co.*, 176 U. S. 181, 204; *Erlanger* v. *New Sombrero Phosphate Co.*, 3 App. Cas. 1218, 1236. But, even assuming such a directorate, a decision *contra* to the principal case would not be surprising, and would not require any "disregard of the corporate fiction."

EXTRADITION — INTERSTATE RENDITION — LIABILITY OF THE SURRENDERED PERSON TO CIVIL ACTION IN THE DEMANDING STATE. — The defendant was brought into Oregon from Utah by virtue of rendition proceedings, to be tried for a crime. While the prosecution was pending he was personally summoned to answer in a civil action brought in an Oregon state court. Upon his petition the cause was removed to the Federal court. He then moved therein to quash the service of summons. *Held*, that the motion be granted. *Bramwell* v. *Owen*, 276 Fed. 36 (9th Circ.).

A non-resident voluntarily coming into the state to defend a civil action is exempt from the service of civil process in another action. See BROWN, COURTS AND THEIR JURISDICTION, 2 ed., § 42. The rule is based on a public policy to encourage voluntary attendance upon the courts and expedite the administration of justice. Since the reasons for the rule do not exist in the case of a defendant within the jurisdiction under compulsion, exemption from civil process is generally denied him. *Netograph Mfg. Co.* v. *Scrugham*, 197 N. Y. 377, 90 N. E. 962. On the same ground the exemption is denied by the weight of authority to a defendant involuntarily present in the state by virtue of interstate rendition. *Reid* v. *Ham*, 54 Minn. 305, 56 N. W. 35; *Rutledge* v. *Krauss*, 73 N. J. L. 397, 63 Atl. 988. *Contra*, *Moletor* v. *Sinnen*, 76 Wis. 308, 44 N. W. 1099. But it is submitted that in this situation good faith on the part of the state requires the exemption. There is no objection to trying the defendant for a crime other than that for which he was surrendered; since if he returns to the surrendering state he can be again extradited. *Lascelles* v. *Georgia*, 148 U. S. 537. But the Constitution imposes an obligation on the states to surrender fugitives for the purposes of criminal jurisdiction only. See UNITED STATES CONSTITUTION, Art. IV, § 2 (2). As to granting civil jurisdiction, the surrendering state stands on the same footing as an independent sovereignty. The rule of international extradition should apply. See *In re Reinitz*, 39 Fed. 204 (2d Circ.); *Smith* v. *Corrigan*, 249 Fed. 273 (5th Circ.). Unless the surrendering state expressly confers civil jurisdiction over the fugitive upon the demanding state it is a breach of good faith for the latter to assert it. See 17 HARV. L. REV. 498.

INTERNATIONAL LAW — *DE FACTO* GOVERNMENTS — RUSSIAN SOVIET AS PARTY DEFENDANT. — The plaintiff brought an action for conversion against the Soviet Government, jurisdiction being based on an attachment of its property. The Soviet Government had not been recognized by the United States. The defendant moved to dismiss the complaint, on the ground that it had no capacity to be sued. *Held*, that the motion be denied. *Wulfsohn* v. *Russian Soviet Government*, 66 N. Y. L. J. 1711 (Sup. Ct.).

One sovereign state may sue in another state. *United States* v. *Wagner*, L. R. 2 Ch. App. 582; *Republic of Honduras* v. *Soto*, 112 N. Y. 310, 19 N. E. 845; *State of Yucatan* v. *Argumedo*, 92 Misc. 547, 157 N. Y. Supp. 219. But the capacity to be a plaintiff has been denied to an unrecognized government. *Russian Soviet Government* v. *Cibrario*, 191 N. Y. Supp. 543 (App. Div.); *Russian Soviet Government* v. *Steamers Penza and Tobolsk*, 66 N. Y. L. J. 33 (Fed. Dist. Ct., E. D. N. Y.). But see 31 YALE L. J. 534. This case holds such